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U.S. Department of Homeland Security
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U.S. Citizenship
and Immigration
Services

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FILE:

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Office: NEBRASKA SERVICE CENTER

Date:

IN RE:

Petitioner:

Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional Pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Michael Valdez

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a computer service and integrator firm. It seeks to employ the beneficiary permanently in the United States as a network technician. As required by statute, a Form ETA 750, Application for Alien Employment Certification approved by the Department of Labor, accompanied the petition. The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition and denied the petition accordingly.

On appeal, counsel maintains that the petitioner's financial ability to pay the proffered salary has been established.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The regulation at 8 C.F.R. § 204.5(g)(2) states, in pertinent part:

Ability of prospective employer to pay wage. Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date, the day the Form ETA 750 was accepted for processing by any office within the employment system of the Department of Labor. *See* 8 CFR § 204.5(d). Here, the Form ETA 750 was accepted for processing on April 25, 2001. The proffered wage as stated on the Form ETA 750 is \$38,000 per annum. On the Form ETA 750B, signed by the beneficiary, the beneficiary did not claim to have worked for the petitioner.

On the petition, filed February 7, 2003, the petitioner claimed to have been established in 1990, to have a gross annual income of 1.7 million dollars, and to currently employ five workers.

In support of the petitioner's ability to pay the proffered wage of \$38,000 per year, the petitioner submitted a copy of its Form 1120S, U.S. Income Tax Return for an S Corporation for 2001. It indicates that the petitioner files its taxes on a standard calendar year basis. For the 2001 tax year, it reported \$605,208 in gross sales or receipts, no officers' compensation, \$125,847 in salaries and wages, and ordinary income of -\$206,795. Schedule L of the tax return shows that the petitioner had \$94,800 in current assets and \$16,831 in current liabilities, resulting in \$77,969 in net current assets. Net current assets are the difference between the petitioner's current

assets and current liabilities,¹ and represent a measure of a petitioner's liquidity during a given period. A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If a corporation's end-of-year net current assets are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage out of those net current assets.

On May 21, 2003, the director requested that the petitioner submit additional evidence to demonstrate its ability to pay the proffered wage as of the priority of April 25, 2001 **"and continue to have such ability."** (Original emphasis). The director advised the petitioner that he considered the petitioner's 2001 tax return insufficient to demonstrate its ability to pay the proffered salary.

In response, the petitioner, through counsel, resubmitted another copy of its 2001 corporate tax return. A transmittal letter from counsel suggests that the petitioner's ability to pay the beneficiary's proposed annual wage offer of \$38,000 per year is established by the petitioner's payment of \$125,847 in salaries and wages as shown on line 8 of the 2001 tax return. The petitioner did not submit any evidence in response to the director's request regarding the petitioner's continuing ability to pay the proffered wage.

The director determined that the evidence submitted did not establish that the petitioner had the continuing ability to pay the proffered wage beginning on the priority date, and, on October 1, 2003, denied the petition. The director noted that the petitioner had submitted only a copy of its 2001 federal tax return as evidence of its ability to pay. The director concluded that the petitioner's net income of -\$206,795 was insufficient to establish an ability to pay a salary of \$38,000 per year.

On appeal, counsel submits another copy of the petitioner's 2001 tax return and copies of the petitioner's checking account statements for 2001. Counsel maintains that the petitioner's net assets could cover the proffered salary. Although counsel mischaracterized the amount of the petitioner's net current assets in 2001, as set forth on its tax return, the AAO concurs that the petitioner's net current assets of \$77,969 could have covered an additional salary of \$38,000.

Neither the underlying record, nor counsel's submissions on appeal, however, contain any evidence relating to the petitioner's financial status beyond 2001. As the regulation at 8 C.F.R. § 204.5(g)(2) and the director's request for evidence, issued on May 21, 2003, clearly specify that the petitioner's evidence must support a *continuing* ability to pay the proffered wage, this petition may not be approved. The failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. See 8 C.F.R. § 103.2(b)(14). As the petitioner failed to submit sufficient evidence demonstrating its ongoing ability to pay the proffered wage, it failed to carry its burden of proof to secure the visa classification sought. See *Matter of Brantigan*, 11 I&N Dec. 493 (BIA 1966); *Matter of Soo Hoo*, 11 I&N Dec. 151 (BIA 1965).

¹ According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such as accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

Citing, *Matter of Sonegawa*, 12 I&N Dec. 612 (Reg. Comm. 1967), counsel also asserts on appeal that the petitioner's 13-year history justifies its future prospects for success and establishes its ability to pay the proffered wage. *Matter of Sonegawa*, however, relates to petitions filed during uncharacteristically unprofitable or difficult years within a framework of profitable or successful years. During the year in which the petition was filed, the *Sonegawa* petitioner changed business locations, and paid rent on both the old and new locations for five months. There were large moving costs and a period of time when business could not be conducted. The Regional Commissioner determined that the prospects for a resumption of successful operations were well established. He noted that the petitioner was a well-known fashion designer who had been featured in *Time* and *Look*. Her clients included movie actresses, society matrons and Miss Universe. The Regional Commissioner's determination in *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. In this case, one tax return submitted to the record does not represent a framework of profitable years analogous to the *Sonegawa* petitioner. The AAO cannot conclude that the petitioner has not demonstrated that unusual circumstances have been shown to exist in this case, which parallel those in *Sonegawa*.

Based on the absence of evidence sufficient to demonstrate that the petitioner's ability to pay the proffered wage continued beyond 2001, the AAO cannot conclude that the petitioner has demonstrated its continuing financial ability to pay the proffered as of the priority date of the petition.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

ORDER: The appeal is dismissed.